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No. 361

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

J. L. KAMSLER,

Petitioner,

vs.

H. A. SEINSCHEIMER CO. of Cincinnati, Ohio,

Respondent.

Petitioner's Reply Brief

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To The Honorable Justices Of The Supreme Court:

Your Petitioner, readily admits, that he is not as artistic in the matter of pleadings as the powerful law firm of Kirkland, Fleming et al, but the rules and laws as set down by the Supreme Court state:

> *That pleadings should be looked upon to do substantial justice.*

In the words of former Justice Hughes:

> *The Supreme Court and the Courts of Appeal will take care of themselves: It is the Courts of the poor*

most in need of justice. Indifference to their needs lies disaster.

When the Respondent has to resort to picking flaws in grammar, and the artisticness which a brief is drawn it is obvious that they have no defense.

The Respondent states there never was a question about *Diversity of Citizenship or Federal Jurisdiction,* p. 2. This is news to your Petitioner. There were several motions on each, and one day the court would rule one way, and the next time another, as will be seen by the opinion of the Court of Appeals in the Petitioner's Appendix, pp. 1-4. While on the subject of the thinking of the Court of Appeals, we disagree and do not feel that the lower court was patient, but on the contrary attempted to make the Petitioner give up the chase on several occasions, and when this failed, did all in their power to confuse the record, so that an appeal would be most difficult.

The lower Court at one time did rule that there was Diversity of Citizenship, and that there was Federal Jurisdiction. But, then they permitted the Respondent to place another motion on file and attempt to *prove their case on motion,* when a Jury had been asked for, and *deny the Petitioner his day in Court.* Now the Respondent states that he still does not know exactly what the Petitioner is Appealing from, p. 3. Let us add that your Petitioner never was sure of what was going on, and appealed merely on the basis of the ruling of the Court that the Case was dismissed. No reason was given, other than orally the Judge stated that he felt that the Petitioner was going to harass the witnesses.

If it is true what the Respondent states, that there is *Diversity of Citizenship,* and that the *Federal Court has jurisdiction,* then the only point to consider is the validity

of the Second Verified Amended Complaint, and whether the facts stated in it, if proven would grant your Petitioner relief.

The Respondent also mentions the original complaint and the First Amended Complaint, p. 3. These were never mentioned, had no bearing on his brief and they should be considered *Moot,* even though it is possible they may comply with Rule 8(a) and 8(f) of the Federal Rules of Civil Procedure, *as pointed out in Petitioner's Brief* p. 4.

The Respondent, p. 3, also makes mention that your Petitioner never mentioned Title 28, Section 1343 before. This was brought up both in oral argument in the lower court and in the Court of Appeals.

The Respondent also mentions that this Section does not apply as it only applies to Police Officers. If the Respondent would take the time to read this section he would find that it reads, and the Supreme Court so Ruled in the *Monroe* v. *Pape,* 81 S. Ct. 473, p. 6, of Petitioner's Brief, "*Any Person Acting under color of Law.*"

In Considering the Complaint it is valid under Supreme Court Rules as cited in our brief, pp. 7 to 8.

It definitely gives the Respondent notice as to what the complaint is about and what to expect. It states facts, and damages, that when proven will render a decision for the Petitioner.

The Respondent has stated that the Petitioner's Brief completely disregarded the rules of the Seventh Circuit, p. 4.

Speaking of things and statements that *de hors* the record, these certainly apply. Such matters are not before the court, and it is far too late for the Respondent to challenge them. Had the Respondent read the Brief carefully, or had something else for his defense he would not have mentioned that the Petitioner has failed to set out any reasons whereby the Court of Appeals acted in Conflict with other decisions. It is unnecessary to repeat, so we will just call the Honorable Court's attention to pages 5-8 of Petitioner's brief.

Now comes the ridiculous statement of the Respondent, to again show a lack of legitimate defense, by stating the Reasons for the Petition are not under Rule 38, p. 3, as stated in the Petitioner's Brief but is now Rule 19. We admit the new Rule is 19, but the reasons for requesting a writ of Certiorari are still the same. However, we call the Respondent's attention to the fact that we are not obligated to cite the Rule Number, but merely the reasons.

CONCLUSION

The Respondent has presented a brief, which is typical of the law firm of Kirkland, Fleming, et al, that where they are defenseless, they seek an out through technical pleadings, and this type of defense is frowned upon by the Supreme Court. Pleadings are to be considered to do substantial justice, and your Petitioner has a Verified Complaint that withstands all the technical challenges that the Respondent has thrown at it, because regardless of his wild accusations, the complaint is there, verified, and the facts when proven, will grant the Petitioner relief. So, without going into more reasoning, which will only confuse the record more, which is what the Respondent would like

to do, we say, that the Respondent's brief has given us no reason why the Supreme Court should change its Thinking, Rules and Law in that Pleadings Should be Interpreted to do Substantial Justice, and that in view of the foregoing the Petition for the Writ of Certiorari should be granted.

Submitted In Deference To This Honorable Tribunal.

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END